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REMARKS

I. Status Summary

Claims 1-27 are pending in the present application. Claims 1-27 presently stand rejected. Claims 1, 2, 8, 11, and 23 have been amended by the present Amendment. Claim 7 is canceled by the present Amendment. Claim 22 was previously canceled by Amendment A. Therefore, upon entry of Amendment B, Claims 1-6, 8-21 and 23-27 will remain pending in the subject patent application.

II. Interview Summary and Claim Amendments

Applicants first wish to thank the Examiner for her helpful comments and suggestions as discussed in the telephone interview on June 3, 2004. In response to the Examiner's comments, Applicants have canceled Claim 7 and have amended Claim 8, which originally was dependent from Claim 7, to now be dependent from Claim 1. Further, in response to the Examiner's comments, Applicants have amended Claim 23 by striking the phrase "or the product of Claim 18." Applicants respectfully submit that the cancellation of Claim 7 and the amendments to Claims 8 and 23 have addressed the Examiner's comments. Therefore, based upon these amendments and the Remarks presented below, Applicants respectfully submit that Claim 8 and Claim 23 are now in condition for allowance and respectfully request the same.

Further, as discussed in the June 3, 2004 telephone interview with the Examiner, the subject matter as described and as presently set forth in

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amended Claims 1, 2, and 11 is believed to now be distinguishable over the cited prior art references of record. Accordingly, based upon these amendments and the Remarks presented below, Applicants respectfully submit that Claims 1, 2, and 11 are now in condition for allowance and respectfully request the same.

III. Claim Rejections - 35 U.S.C. § 112, first paragraph

Claims 1-27 stand rejected by the Examiner under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description. More particularly, the Examiner asserts that in the originally claimed subject matter, the preferred dyes are selected from "polyphosphates" having the formula $O(P=O)(OH)R$, which assertedly does not give basis for the newly added proviso which states "if the phosphonate derivative is selected from phosphonates having the formula $O(P=O)(OH)R$."

Applicants submit that the current amendments to Claim 1 and Claim 11, whereby the above-mentioned proviso containing the term "phosphonates" is deleted, render the Examiner's rejection of Claims 1-27 under 35 U.S.C. § 112 moot. Applicants thereby respectfully request formal withdrawal of the rejections of Claims 1-27 under 35 U.S.C. § 112, first paragraph.

IV. Claim Rejections - 35 U.S.C. § 102

Claims 1, 2, 4-18, 20, 21, and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,092,478 to Plant et al. (hereinafter "Plant et al."). The Examiner asserts that Plant et al. discloses

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fiber-reactive triphenyldioxazine chromophores bonded to a triazine ring, which is further substituted with phenyl phosphonic acid or naphthyl phosphonic acid. See Plant et al., col. 4 to col. 6. The Examiner further asserts that the dyes disclosed by Plant et al. correspond to the dyestuffs claimed in the instant application in the following manner: (a) the chromophore is triphenyldioxazine; (b) the nitrogen containing heterocycle is triazine; and (c) the linking group which links the chromophore to the nitrogen-containing heterocycle is NH or NR1 as claimed. See Plant et al., Claim 8, in columns 23 and 24.

Additionally, the Examiner asserts that the method of making the dye disclosed in Plant et al. at column 5, line 37 et seq is the same as claimed in instant Claim 18. Finally, the Examiner asserts that the pH range of 5.5 for the reaction is disclosed at the top of column 6 in Plant et al. and that the use of said dyes to dye cellulose, wool, polyamide, silk, hair and leather is taught at column 9, lines 50 et seq.

In response to Applicants' arguments advanced in Amendment A, the Examiner asserts that the dyes of Plant et al. are not excluded by the proviso to Claim 1, which provides that "if the phosphonate derivative is selected from phosphonates having the formula $-O-(P=O)(OH)R'$ " Accordingly, the Examiner asserts that the dyes disclosed in Plant et al. have the phosphonate derivative phenyl- PO_3H_2 , which is not excluded by the proviso. Further, the Examiner asserts that the dyes excluded by the proviso are a derivative of the formula $-PO_4H_2$.

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Claims 1, 2, 4-10 and 12 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,139,345 to Crabtree et al. (hereinafter "Crabtree et al."). See Crabtree et al., dyestuffs 27, 32 and 33 in columns 7 and 8. The Examiner asserts that Crabtree et al. discloses fiber-reactive dyestuffs comprising chromophores which contain the sodium salt of phenylphosphoric acid and that the chromophore in dye 27 in columns 7 and 8 of Crabtree et al. is an azo dye and is linked to the triazine by NH. The Examiner further asserts that the chromophore in dye 32 is triphenyldioxazine, which is linked to the chromophore by NH and that said dyes are used to dye cellulose.

In response to Applicants' arguments advanced in Amendment A, the Examiner asserts that the dyes of Crabtree et al. are not excluded by the proviso to Claim 1, which provides that "if the phosphonate derivative is selected from phosphonates having the formula $-O-(P=O)(OH)R'$ " Accordingly, the Examiner asserts that the dyes disclosed in Crabtree et al. have the phosphonate derivative phenyl- PO_3H_2 , which is not excluded by the proviso. Further, the Examiner asserts that the dyes excluded by the proviso are a derivative of the formula $-PO_4H_2$.

In response to the Examiner's contentions, Applicants have amended Claim 1 and Claim 11 by deleting the abovementioned proviso and defining the Y group as follows: "Y is a phosphonate or a borate derivative, wherein the phosphonate derivative is selected from one of:

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-O-(PO)(OH)C(CH₃)(OH)(PO)(OH)₂ and -O-(P=O)(OH)R' wherein R' is any suitable nucleophilic moiety, under the proviso that R' is not OH." Support for these amendments can be found in Claim 1, Claim 3, and Claim 11 of the application as filed. Applicants also amended Claim 2 by deleting the phrase "preferably aceto diphosphonic acid" and inserting the phrase "derivative selected from one of: -O-(PO)(OH)C(CH₃)(OH)(PO)(OH)₂ and -O-(P=O)(OH)R' wherein R' is any suitable nucleophilic moiety, under the proviso that R' is not OH." Support for this amendment can be found in Claims 1-3 of the application as filed. No new matter has been added.

Preliminarily, Applicants note that it is well settled that for a cited reference to qualify as prior art under 35 U.S.C. § 102, each element of the claimed invention must be disclosed within the reference. "It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention." Hybritec, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986). Applicants respectfully submit that for the cited references to be anticipating references under 35 U.S.C. § 102, the references must disclose each and every element of the claimed invention.

Applicants respectfully submit that amended Claim 1 and amended Claim 11 do not encompass triphenyloxazine triazinyl dyestuffs having phosphonic acid groups as described in Columns 4 to 6 and claimed in Claim 8 of Plant et al. and dyestuffs 27, 32, and 33 described in columns 7 and 8 of Crabtree et al., which comprise chromophores containing the sodium salt of

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phenylphosphoric acid. Thus, Applicants respectfully submit that amended Claims 1 and 11 are not anticipated by Plant et al. or Crabtree et al.

Further, Applicants respectfully submit in view of the above amendments and remarks, that the pH range of from about 2 to about 8 recited in Claim 20 of the instant application for a process for the preparation of triphendioxazine triazinyl dye compounds comprising phosphonates selected from one of: $-O-(PO)(OH)C(CH_3)(OH)(PO)(OH)_2$ and $-O-(P=O)(OH)R'$, wherein R' is any suitable nucleophilic moiety, under the proviso that R' is not OH is not anticipated by the pH range disclosed at the top of column 6 of Plant et al. Accordingly, Applicants respectfully submit that the use of said dye compounds to dye cellulose, wool, polyamide, silk, hair and leather also is not anticipated by said use taught at column 9, lines 50 et seq. of Plant et al.

Thus, Applicants respectfully submit that Plant et al. and Crabtree et al. do not disclose each and every element of the subject matter claimed in the subject application and therefore do not qualify as prior art under 35 U.S.C. § 102(b). Therefore, Applicants respectfully request that the rejections of Claim 1 and Claim 11 under 35 U.S.C. § 102(b) in view of Plant et al. and Crabtree et al. be withdrawn and Claim 1 and Claim 11 be allowed at this time. Further, since independent Claims 1 and 11 are allowable as amended, Applicants further submit that dependent Claims 2, 4-10, 12-18 and 20, 21 and 23 are also allowable since they depend from Claims 1 and 11 and merely add additional limitations thereto.

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CONCLUSION

In light of the above Amendments and Remarks, and the telephone interview with the Examiner on June 3, 2004, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Examiner has had an opportunity to review the above Amendments and Remarks, the Examiner is respectfully requested to telephone the undersigned attorney in order to resolve these matters and avoid the necessity for another Official Action and response thereto.

DEPOSIT ACCOUNT

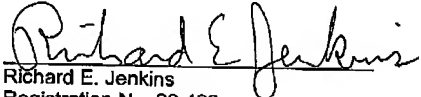
The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON & TAYLOR, P.A.

Date: 6-4-04

By:


Richard E. Jenkins
Registration No. 28,428

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REJ/EEM/JWC/cht

Customer No: 25297